



EUROPEAN COMMISSION

Brussels, 24.IV.2007
K (2007) 1669 Konečné znenie

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;">PUBLIC VERSION This document is made available for information purposes only.</p>
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**Subject: State aid N° C 12/2007 (ex N 799/2006) – Slovak Republic
Regional ad hoc aid to Glunz&Jensen**

Sir,

The Commission wishes to inform the Slovak Republic that, having examined the information supplied by your authorities on the aid measure referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

I. PROCEDURE

- (1) By electronic notification dated 29 November 2006, registered by the Commission on 30 November 2006 with reference A/39718, the Slovak authorities, in accordance with Article 88(3) of the EC Treaty, notified to the Commission their intention to grant regional ad hoc investment aid in the form of tax allowance in favour of the company Glunz& Jensen s.r.o. A request for information aiming at clarifying some points of the notification was sent on 26 January 2007 (D/50360). The Slovak authorities replied by letter dated 20 February 2007 (A/31585).

II. DESCRIPTION OF THE AID MEASURE

2.1. Aim of the measure

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- (2) The aim of measure is to promote the regional development of Prešov region (Eastern Slovakia), which is an assisted area under Article 87 (3) (a) of the EC Treaty in accordance with the Slovak regional aid map¹ applicable at the date of the notification with a regional aid ceiling of 50% Net Grant Equivalent (NGE).
- (3) The proposed project constitutes an ad hoc aid measure notified by the Slovak authorities. The aid measure at hand is not granted under an existing scheme (i.e. its legal basis is not listed in the Accession Treaty as existing aid scheme, nor was it the subject of the so-called interim mechanism, nor has the Commission approved, after the accession of Slovakia to the EU, an aid scheme based on these legal provisions).

2.2. The form and nature of the aid:

- (4) The notified aid will be provided in the form of a tax exemption applied on an annual basis between 2007-2010 and up to 100% of the corporate tax liability of the aid recipient, Glunz& Jensen s.r.o. The total amount of the tax exemption is limited to SKK 42 million in present value² (approx. EUR 1.15 million). The aid cannot be cumulated with aid received from other sources for the same investment project.

2.3. Legal basis of the ad hoc aid

- (5) The legal basis of the ad hoc aid is State Act N° 231/1999 as amended; Income Tax Act No 595/2003, as amended, and the Income Tax Act No 366/1999, as amended, as at 31 December 2003, in particular Section 52(3) of Income Tax Act No 595/2003, as amended, on the conditions laid down in Section 35a of the Income Tax Act No 366/1999, as of 31 December 2003³.

2.4. Beneficiaries

- (6) The beneficiary of the aid, Glunz&Jensen s.r.o., is a large enterprise, i.e. not an SME within the meaning of Commission Regulation (EC) N° 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises⁴. Glunz&Jensen s.r.o. is the Slovak subsidiary of Glunz&Jensen A/S (hereafter "Glunz&Jensen") headquartered in Ringsted (Denmark), with other subsidiaries at the time of notification in Virginia (USA) and in Thetford (UK).
- (7) Glunz&Jensen is the world leading manufacturer and distributor of graphic arts pre-press processing equipment for offset printing plates and plateline equipment, with a market share of approximately [...] %* in Europe.

¹ SK 72/2003 - Slovak Republic - "Regional State aid map of the Slovak Republic - prolongation until 31 December 2006", C(2004) 1757/7, 28.4.2004. Under the regional aid map 2007-13, the regional aid ceiling is 50% GGE, see the decision on N 469/06 by letter C(2006) 3975, 13.9.2006.

² Expressed in the value of the year 2007 and calculated at a reference rate of 5.62% applicable at the date of the notification.

³ Zákon č. 231/1999 Z.z. o štátnej pomoci, v znení neskorších predpisov, Zákon č. 595/2003 Z.z. o dani z príjmov, v znení neskorších predpisov a Zákon č. 366/1999 Z.z. o daniach z príjmov, v znení neskorších predpisov, v znení účinnom k 31. decembru 2003, najmä §52 ods.3 zákona č. 595/2003 Z.z. o dani z príjmov, v znení neskorších predpisov, za podmienok uvedených v §35a zákona č. 366/1999 Z.z. o daniach z príjmov, v znení účinnom k 31. decembru 2003.

⁴ OJ L 10, 13.01.2001, p. 33-42.

*Covered by the obligation of professional secrecy.

2.5. Investment project

- (8) In 2004, Glunz&Jensen s.r.o. started works on an initial investment in Slovakia with an investment volume of 213 million SKK (approx. EUR 5.8 million). The investment project is being implemented over the period 2004-2009, according to the Slovak authorities, in two phases: 2004-2006 and 2007-2009.
- (9) 100This project aims to relocate the production activities existing in 2004 in the UK and in Denmark to Prešov. As a result of this relocation project, the Thetford plant was already closed down at the end of 2006.
- (10) The Prešov plant is to be developed into the firm's main production centre. In fact, as indicated by the Slovak authorities, all machinery to be installed in the Slovak plant are transferred directly from Denmark and the UK. The eligible costs of the project include therefore only the buildings and some minor additional equipment.
- (11) The first step of the investment phase 2004-2006 consisted in the purchasing of a production hall and a greenfield site for future expansion. This was followed in a second step by the renovation of the facilities and the purchase of equipment (not directly linked to production). The total amount of this first phase of the investment is SKK 128 million (approx. EUR 3.5 million). As stated in declarations annexed to the notification, Glunz&Jensen s.r.o. did not receive any state aid for this part of the project, nor is any application pending.
- (12) The second phase of the investment to be carried out over the period 2007-2009 corresponds to the project notified by the Slovak authorities on 29 November 2006. This part concerns the continuation of the initial project by constructing further buildings and purchasing further equipment (IT, trucks and office equipment) in an amount of SKK 84 million in present value (approx. EUR 2.3 million).
- (13) The production unit in Slovakia was opened in April 2005. Since then, the production at the factory has increased markedly, and productivity has improved considerably⁵.

III. ASSESSMENT OF THE AID MEASURE

- (14) In accordance with Article 6(1) of Council Regulation (EC) No 659/1999 of 22 March 1999, the decision to initiate proceedings shall summarise the relevant issues of fact and law, shall include a preliminary assessment from the Commission as to the aid character of the proposed measure, and shall set out the doubts as to its compatibility with the common market.

3.1. Legality of the aid measure

- (15) By notifying the aid measure before putting it into effect, the Slovak authorities respected their obligations under Article 88(3) of the EC Treaty.

3.2. Existence of state aid

⁵ Information from the Annual Report 2005-2006 available on the website of the company Glunz&Jensen.

- (16) State resources are involved since an exemption from the payment of corporate income tax is foreseen.
- (17) The measure is selective since it addresses only one undertaking.
- (18) The measure relieves the beneficiary of the aid from costs which it would have to bear under normal market conditions. It will therefore provide an advantage to Glunz&Jensen over other companies.
- (19) The measure affects trade between Member States since *i*) the beneficiary is active in a sector where strong intra-community trade exists and since *ii*) the relocation of activities from Denmark and UK has a strong effect on sectoral trade flows.
- (20) In view of the above, the Commission considers that notified measure constitutes state aid within the meaning of Article 87(1) of the EC Treaty.

3.3. Compatibility of the aid measure

- (21) Having established that the measure involves state aid within the meaning of Article 87(1) of the EC Treaty, it is necessary to consider whether the above mentioned measure can be found compatible with the common market.
- (22) The Commission has examined the measure in the light of Article 87 of the EC Treaty, in particular on the basis of the Guidelines on National Regional Aid⁶ (hereinafter referred to as "RAG 1998"). The results of this examination are summarised below.
- (23) According to RAG 1998, aid for investment in disadvantaged areas may be compatible with the common market, but only if certain conditions are satisfied. These conditions are:
 - 1. The project must constitute an initial investment (c.f. point 4.4 of RAG 1998).
 - 2. The aided investment has to take place in an area eligible for regional aid under Article 87(3)(a) or (c), as defined in the applicable regional aid map (c.f. point 3 of RAG 1998).
 - 3. It must refer to eligible expenditure in line with RAG (c.f. point 4.5 of RAG 1998).
 - 4. The intensity of the aid must not exceed the applicable regional aid ceiling, as defined by the applicable regional aid map (c.f. point 4.8 of RAG 1998).
 - 5. The cumulation of the aid with public support from other sources must not lead to a situation where the applicable regional aid intensity ceiling is exceeded (c.f. point 4.18 of RAG 1998).
 - 6. The project has to be maintained for a minimum of 5 years after its completion (c.f. point 4.10 of RAG 1998).

⁶ OJ C 74, 10.3.1998, p.9.

7. The beneficiary has to provide a minimum contribution of 25% free of any aid to the financing of the investment (c.f. point 4.2 of RAG 1998).
 8. The aid beneficiary must have introduced the aid application before the start of works on the investment project (c.f. point 4.2 of RAG 1998).
 9. For an ad hoc aid, the positive contribution to regional development must outweigh the negative effects on sectoral competition and trade (c.f. point 2 of RAG 1998).
- (24) After having examined the submitted documents, the Commission concludes that the following conditions are met:
1. The project constitutes effectively an initial investment, i.e. the setting up of a new establishment.
 2. The investment is taking place in the region of Prešov, which is an assisted area under Article 87 (3) (a) of the EC Treaty.
 3. The eligible expenditure concerns the cost of buildings and equipment, i.e. cost items eligible for regional aid.
 4. The intensity of the aid is 50% NGE⁷ which does not exceed the applicable regional aid ceiling in the region concerned.
 5. The Slovak authorities confirm that the project will be maintained for at least 5 years after the completion of the investment.
 6. The aid beneficiary's own contribution is above the required 25% threshold.
 7. The rules on cumulation of aid are respected (c.f. point 2.2 above).
- (25) On the basis of the information available at this stage of the assessment, the Commission has the following doubts as to the compatibility of the measure with RAG 1998:
- First, it appears that the two phases of the investment belong to the same investment project since they constitute part of an overall plan to accommodate the production lines to be relocated gradually from Denmark and the UK. The Slovak authorities themselves also refer to the two phases as one investment project. *“The investment project submitted by the company Glunz&Jensen is being implemented over the period 2004-2009 in two phases: 2004-2006, 2007-2009”*.
- Furthermore, on page 6 of the *“Application for provision of State Aid in form of tax relief”* submitted by the beneficiary to the Slovak authorities, which was annexed to the notification, Glunz&Jensen s.r.o. indicates that the investment period runs from 2004 till 2008⁸, and the total investment costs amount to “more than SKK 200 million”, which is the amount corresponding to all investment made by Glunz&Jensen s.r.o. in Slovakia.

⁷ Since the aid is granted in the form of tax exemption, the NGE of the aid equals its GGE.

⁸ 2008 seems to be a typing error made by the beneficiary in the application for the aid. In all other documents submitted the year 2009 is indicated as the end of the project.

In light of the above, it appears that the project which has been notified concerns the second phase of one comprehensive investment project which started already in 2004.

Moreover, since the aid application by the beneficiary itself does not distinguish between the two phases of investment, the Commission cannot exclude on the basis of information available at this stage that the investment period was artificially split into two phases, in order for the beneficiary to become eligible to apply for the aid in 2006.

- Second, according to the information provided by the Slovak authorities, the application for aid, signed on 29 of June 2006, was submitted only in November 2006, i.e. after the first stage of the investment in 2004 was started.

Consequently, the Commission has doubts whether the condition on the incentive effect of the aid as laid down in point 4. 2 of RAG 1998 is respected. The Commission underlines that as a general principle, state aid which distorts or threatens to distort competition and affects trade between Member States can only be approved if these negative effects are more than outweighed by a positive contribution to a Community objective (here: regional development) which is achieved by the aid. At this stage the Commission considers that an aid applied for by the end of 2006 is unable to trigger retrospectively an investment decision which led to the start of works in 2004 and a start of production activities in April 2005.

- Third, this consideration that the availability of the aid was no decisive criterion for the decision of the beneficiary to start work on relocation, seems to be confirmed by the beneficiary's own statement in its aid application which explains the reasons for relocating its activities to Slovakia: *"The board (of Glunz&Jensen) decided during the course of 2003 to investigate the possibility of establishing a production unit in a low cost country. The objective hereof being to lower the production cost, develop sub-suppliers in Central and Eastern Europe (...). Glunz&Jensen has conducted a comparative analysis of eleven Central and Eastern European countries to decide on the optimal location of the subsidiary (...). Out of these 11 countries, the Czech Republic, the Slovak Republic and Bulgaria were investigated. The conclusion hereof being that the Slovak Republic were deemed the most appropriate location considering Glunz&Jensen's business and factor combinations on the assessed markets."*⁹
- Fourth, the Slovak authorities explained the reason why the beneficiary did not apply for aid for the first phase of the investment project. According to their explanation, the company assumed that prior to the Slovak Republic's accession to the EU it was not necessary to apply for the authorisation of state aid in the form of tax relief. In their understanding, the application for the aid was to be submitted only in the tax declaration for the year in which the company first incurred a tax liability.

According to the Slovak authorities, this means that Glunz&Jensen s.r.o. planned to apply for state aid from the very beginning of the investment project's implementation in 2004.

⁹ Point 3 of the Application for provision of State Aid in form of tax relief.

The Commission considers that the lack of knowledge from the beneficiary concerning the procedure to follow cannot be taken into consideration. It should be stressed that the granting of aid under section 35a of the Slovak Income Tax Act No 366/1999, as amended, was not automatic prior to accession of Slovakia, nor is it automatic currently, since there is no existing aid scheme covering the above mentioned section. Consequently, this type of aid was and remains individually notifiable to the Commission as ad hoc aid, as is shown by approximately 40 ad hoc notifications submitted by Slovakia applying this legal base under the so-called interim procedure.

- Finally, even if the aid had had an incentive effect, substantial doubts would need to be raised: In fact, RAG 1998 (point 2) takes a negative stance towards ad hoc aid unless it can be proved that the regional contribution of the measure outweighs the distortion of competition and the effects on trade. In this context, the Commission notes the following:
 - Although the measure provides a significant contribution to regional development (155 direct jobs, some 30 indirect jobs), its negative effects seem to be equally substantial.
 - The relevant product market of the beneficiary is graphic arts pre-press processing equipment, in particular computer-to-plate (CtP) processors. The Commission notes that the aid is to be granted to a company which has a market share of approximately [...] % on the European market. The closest competitors of Glunz&Jensen in Europe along with their market shares are: Height Design, UK [...] %, Agfa (Lastra) Belgium [...] %, E-graf, Italy [...] %, Haase, Germany [...] % and Ovit, Italy [...] %. Given the market position of the beneficiary, the Commission is of the opinion that the foreseen measure may have a major impact on competition in the relevant, very specific market in which the beneficiary is active.
 - Furthermore, the project concerns a relocation of production activity and machinery from Denmark and the UK. Because it was solely a production facility, the plant in Thetford in the UK was closed down at the end of 2006, following the transfer of production to Slovakia. According to information found on the company's web site, 77 employees were made redundant in Thetford. The Danish company will in future focus on sales, customer services, R&D and the operation of a pilot plant. The relocation has therefore a significant effect on trade between Member States.

(26) In view of the above, the Commission after a first preliminary assessment of the measure has doubts whether, and if yes to which extent, the notified aid can be considered compatible with RAG 1998 and the common market. The Commission is unable to form a prima facie opinion on the partial or complete compatibility of the measure in question and is of the opinion that a more thorough analysis of the aid measure is necessary. The Commission is under duty to carry out all the requisite consultations and, therefore, to initiate the procedure under Article 88(2) of the EC Treaty, if the initial investigation does not enable the Commission to overcome all the difficulties involved in determining whether the aid is compatible with the common market. This would give the opportunity to the third parties whose interest may be affected by the granting of the aid to comment on the measure. In the light of both the

information notified by the State concerned and that provided by any third parties, the Commission will assess the measure and will take its final decision.

- (27) This assessment in no way prejudices the question of the compatibility with the EC Treaty of Section 35a of the Slovak Income Tax Act No. 366/1999, as amended.

IV. DECISION

- (28) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests the Republic of Slovakia to submit its comments and to provide all such information as may help to assess the aid measure, within one month of the date of receipt of this letter.
- (29) The Commission wishes to remind the Republic of Slovakia that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipients.
- (30) The Commission warns the Republic of Slovakia that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication. If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B – 1049 Brussels

Fax No:32.2.2961242

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission